

## Occupational Safety and Health Review Commission

## § 2204.307

provided in § 2204.202(b) for confidential financial information.

[62 FR 35964, July 3, 1997]

### § 2204.302 When an application may be filed.

(a) An application may be filed whenever an applicant has prevailed in a proceeding or in a discrete substantive portion of the proceeding, but in no case later than thirty days after the period for seeking appellate review expires.

(b) If Commission review is sought or directed of a judge's decision as to which an application for a fee award has been filed, proceedings concerning the award of fees shall be stayed until there is a final Commission disposition of the case and the period for seeking review in a court of appeals expires.

(c) If review of a Commission decision, or any item or items contained in that decision, is sought in the court of appeals under section 11 of the OSH Act, 29 U.S.C. 660, an application for an award filed with the Commission with regard to that decision shall be dismissed under 5 U.S.C. 554(c)(1) as to the item or items of which review is sought. If the petition for review in the court of appeals is thereafter withdrawn, the applicant may reinstate its application before the Commission within thirty days of the withdrawal.

[46 FR 48080, Sept. 30, 1981, as amended at 70 FR 22792, May 3, 2005]

### § 2204.303 Answer to application.

(a) Within 30 days after service of an application, the Secretary shall file an answer to the application.

(b) If the Secretary and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted upon request.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Secretary's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Secretary shall include

with the answer either supporting affidavits or a request for further proceedings under § 2204.307.

### § 2204.304 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 2204.307.

### § 2204.305 Comments by other parties.

Any party to a proceeding other than the applicant and the Secretary may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Commission determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

### § 2204.306 Settlement.

The applicant and the Secretary may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and the Secretary agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

### § 2204.307 Further proceedings.

(a)(1) The determination of an award shall be made on the basis of the record made during the proceeding for which fees and expenses are sought, except as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) On the motion of a party or on the judge's own initiative, the judge may order further proceedings, including discovery and an evidentiary hearing, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses).

(3) If the proceeding for which fees and expenses are sought ended before